
In Re:

Case No. 04-34728

James Arnold Waller and Wendi Christine Waller
Debtor(s)

Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Ford Motor Credit Company moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on September 13, 2004 at 10:30 AM o'clock, in
3. Any response to this motion must be filed and delivered not later than September 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 1, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed August 12, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2001 LINCOLN NAVIGATOR 4WD (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).
6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the

terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor has no equity in the collateral, and the collateral is not necessary to an effective reorganization.

7. Movant gives notice that it may, if necessary, call Chester Marzec, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and collateral value.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the collateral promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, Ford Motor Credit Company moves the Court for an order modifying the automatic stay of §362(a) of the Bankruptcy Code to permit Movant to take possession and dispose of the collateral, and such other relief as may be just and equitable.

Dated: August 23, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

DO NOT ACCEPT WITHOUT VERIFICATION

STA

CERTIFICATE

****MOTOR VEHICLE****

02M584837

VIN

SLNFU28A81LJ03408

YEAR MAKE

2001 LIN

BODY CWT/CAP/SIZE

UP

56

ODOMETER

594 A

TAXABLE VALUE

40,970

PREVIOUS TITLE

MSO

FUEL

6

DATE PURCHASED

12/20/2001

DATE ACCEPTED

02/13/2002

DATE ISSUED

02/20/2002

ODOMETER LEGEND:

A - Actual Mileage
E - In excess of mechanical limits
N - Not actual mileage; WARNING-
ODOMETER DISCREPANCY

MAIL TO

FORD MOTOR CREDIT COMP

P O BOX 105704

ATLANTA

GA 30348

OWNER

WALLER JAMES A

WALLER WENDI C

JTWROS

FIRST LIENHOLDER

FORD MOTOR CREDIT COMP

P O BOX 105704

ATLANTA

GA 30348

FILE NUMBER

000766541

DATE FILED

02/13/2002

Signature below certifies under
penalty of perjury in the second
degree the release of the first
lienholder's interest in the vehicle.
Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO

CO. NO.

MATURITY DATE

71,985.00

02/13/2010

Authorized Agent Signature

Date

SECOND LIENHOLDER

FILE NUMBER

DATE FILED

Signature below certifies under
penalty of perjury in the second
degree the release of the second
lienholder's interest in the vehicle.
Lienholder's Name

AMOUNT OF LIEN

LIEN EXTENDED TO

CO. NO.

MATURITY DATE

Authorized Agent Signature

Date

THE APPLICANT HAS BEEN DULY REGISTERED IN THIS OFFICE AS THE OWNER OF THE MOTOR VEHICLE DESCRIBED,
SUBJECT TO LIENS AND ENCUMBRANCES IN THE ORDER SHOWN.

02049237315VDGS

EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REVENUE

FRED FISHER

DATE DUPLICATE ISSUED

CONTROL NO.

E7896726

(This is not a title number)

KEEP IN SAFE PLACE - ANY ALTERATION OR ERASURE VOID THIS TITLE

DR-2001 (6/00)

VOID IF ALTERED

EXHIBIT A

COLORADO SIMPLE INTEREST VEHICLE RETAIL INSTALMENT CONTRACT

DATE

Buyer (and Co-Buyer) Name and Address (Include County and Zip Code) **JAMES A WALLER**
WENDI C WALLER
1801 S LACROSS
PUEBLO, PUEBLO, CO 81001

CREDITOR (Seller Name and Address) **SOUTH POINTE LINCOLN/MERCURY INC**
945 MOTOR CITY DRIVE
COLORADO SPRINGS, CO 80906

You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract.

New/Used	Year and Make	Model	GVW if Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
NEW	2001 LINCOLN	NAVIGATOR		5LMFU28A81LJ03408	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-in 1997 FORD 1986 MB \$ 27500.00 26950.66
 Year and Make Gross Allowance Amount Owning

ITEMIZATION OF AMOUNT FINANCED

1. Cash Price	\$ 58420.00	(1)
2. Down Payment	N/A	
(a) Third Party Rebate Assigned to Creditor	\$ 10000.00	
(b) Cash Down Payment	N/A	
(c) Deferred Down Payment due	\$ 10000.00	
(d) Total Cash Down Payment (Items 2(a) plus 2(b) plus 2(c))	\$ 549.34	
(e) Trade-in (Description Above)	\$ 10549.34	(2)
Total Down Payment (Items 2(d) plus 2(e))	\$ 47870.66	(3)
3. Unpaid Balance of Cash Price (1 minus 2)		
4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts)		
To Public Officials		
(i) for license, title & registration fees \$ 29.50		
(ii) for official fees \$ N/A		
(iii) for taxes (not in Cash Price) \$ 1205.88	\$ 1235.38	
To Insurance Companies for:		
Credit Life Insurance	\$ 1224.00	
Credit Disability Insurance	\$ 3318.00	
To FORD ESP for SVC CONT	\$ 2450.00	
To EASY CARE for GAP INSURANCE	\$ 500.00	
Total	\$ 8727.38	(4)
5. Amount Financed (3 plus 4)	\$ 56598.04	(5)

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments	The total cost of your purchase on credit, including your downpayment
9.90 %	\$ 15386.96	\$ 56598.04	\$ 985.00	\$ 2534.34

Payment Schedule - ☒ Number of Payments **59** Amount of Each Payment **\$ 199.75** When Payments are due **monthly starting 01/19/2002**

Your payment schedule will be: ☐ 1 final **\$ 199.75**

Prepayment: If you pay off your debt early, you will not have to pay a penalty.

Late Payment: You must pay a late charge of \$15.00 on each scheduled payment received more than 10 days late.

Security Interest: You are giving a security interest in the vehicle being purchased.

Contract: Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date and prepayment penalty.

COMMERCIAL OR AGRICULTURAL USE CONTRACTS: The charge shown in the above box for Late Payment is applicable to personal, family, household use contracts only. If you purchased the vehicle for commercial or agricultural use, you must pay a late charge on the portion of each payment received more than 10 days late of 7.5 percent of the late amount or \$50.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

BUYER: *[Signature]* CO-BUYER: *[Signature]*

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing.

[Signature] Buyer Signs *[Signature]* (Co) Buyer Signs

By signing below, *[Signature]* accepts this contract. If no other Assignee is named in a separate assignment attached to this contract, the Seller assigns it to Ford Motor Credit Company.

Seller: *[Signature]* SOUTH POINTE LINCOLN/MERCURY INC Title: *[Signature]*

FC 17005-SI Oct 00 (Previous editions may NOT be used.)

SEE BACK FOR ADDITIONAL AGREEMENTS

INSURANCE

YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

☒ Credit Life **JAMES A WALLER** Insurer
 \$ 1224.00 **WENDI C WALLER**
 Premium Insured(s)
[Signature] Signature(s)

☒ Credit Disability **JAMES A WALLER** Insurer
 \$ 3318.00 **JAMES A WALLER**
 Premium Insured
[Signature] Signature

☐ N/A Type of Insurance **N/A** Term **N/A**
 Insurer **N/A** Premium **N/A**
 Signature

Credit Life and Credit Disability insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at time of loss, but not more than the limits of the policy.

☐ Comprehensive ☐ N/A Deductible Collision
☐ Fire-Theft-Combined Additional Coverage
☐ Towing and Labor
☐ Term **N/A** Months (Estimate)
 Premium **N/A**

THIS CONTRACT DOES NOT PROVIDE FOR AUTOMOBILE LIABILITY INSURANCE, AND SAID BUYER ALSO STATES THAT HE HAS HE HAS NOT (STRIKE WORDS) NOT APPLICABLE IN EFFECT AN AUTOMOBILE LIABILITY POLICY AS DEFINED IN SECTION 42-7-103(2), COLORADO REVISED STATUTES 1973, ON THE MOTOR VEHICLE SOLD BY THIS CONTRACT.

If this transaction contains a fee or premium for guaranteed automobile protection, all holders and assignees of this consumer credit transaction are subject to all claims and defenses which the buyer(s) could assert against the original creditor resulting from the buyer(s) purchase of guaranteed automobile protection.

QUESTIONS?

PLEASE CALL US AT 1-800-727-7000

00-001
 Ford Motor Credit Company
 260 Interstate N. Pkwy N.W.
 12th Floor
 Atlanta, GA 30339

ORIGINAL

EXHIBIT B

U281 4X4 NAVIGATOR 47395 00 41875 00
 2001 MODEL YEAR
 TK MINERAL GREY
 K2 MED GRAPHITE BUCKET, LEATHER
 .THIRD ROW BENCH SEAT
 .2ND ROW LEATHER BUCKETS
 .17" CAST ALUMINUM WHEELS
 .PREM ELEC AM/FM/STEREO/CASSET
 .TOW HOOKS (4X4)
 .TRAILER TOWING PACKAGE
 .POWER HEATED/SIGNAL MIRRORS
 .AUXILIARY CLIMATE CONTROL
 .4 CORNER LOAD LEVELING SUSPEN
 .5.4L 4-VALVE ENGINE
 44E .ELECTRONIC 4-SPD AUTO TRANS
 .P255/75R-17 OWL ALL-TERRAIN
 .3.73 RATIO LIMITED SLIP AXLE
 413 SKID PLATE PACKAGE 115 00 99 00
 153 FRONT LICENSE PLATE BRACKET NC NC
 TOTAL VEHICLE & OPTIONS 47510 00 41974 00
 DESTINATION & DELIVERY 690 00 690 00
 SCHEDULE A (MEMO) .00

TOTAL FOR VEHICLE 48200 00

11 U.S. GAL GAS FACTORY 21 45
 BATCH-ID YH14111794 N RD 2X
 PRICE LEVEL 120220U28 VIN: 5LMFU28A81LJ03408
 SHIPPING WEIGHT 5561 LBS.

STK# 9819/1285X
 Continental
 AD3C 44 83100

950.00
 95+ 91.07
 40-
 1130+ 625.00
 7190-
 1130+ 113.00
 120-
 163+ 188.89
 7190-
 13+ 4225.45
 900- 4875.45

40306

THIS INVOICE MAY NOT REFLECT THE FINAL COST OF THE VEHICLE IN VIEW OF THE POSSIBILITY OF FUTURE REBATES, ALLOWANCES, INCENTIVES AND INCENTIVE AWARDS. FORD MOTOR COMPANY TO THE DEALER.					
FINANCIAL ADJUSTMENT	INVOICE TOTAL	LESS: CREDITORS (SEE TRAILER IN COMMENTS)	LESS: SERVICE (SEE TRAILER IN COMMENTS)	NET PRICE (SEE TRAILER IN COMMENTS)	A PLAN
490.00	43175.45	950.00	625.00	41600.45	41126.45

950.00 2.00 99.00 .00 948.00 41250.00

SOLD TO

Varsity Ford Linc Merc, Inc. 67W033
 1351 Earl Rudder Freeway South
 College Station TX 77845

SHIP TO (IF OTHER THAN ABOVE)

59.80

SHIP THROUGH

2	6	TX	RK34
DATE OF PURCHASE	08/14/00	FINANCIAL	67-1132 K2 09

INVOICE & UNIT IDENTIFICATION NO

5LMFU28A81LJ03408

FINAL ASSEMBLY POINT

MICHIGAN TRUCKFORD MOTOR CREDIT

FINANCE COMPANY AND/OR BANK

000001

104-03466-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
James Arnold Waller and Wendi Christine Waller
Debtor(s)

Case No. 04-34728
Chapter 7 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Chester Marzec, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 29850804.
2. The Debtor owes the Creditor \$36,107.75, payoff amount as of August 12, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$1,199.75. As of August 12, 2004, the loan payments are in arrears \$2,399.50 for payments owing since June 27, 2004.
3. The debt owed to the Creditor is secured by a perfected lien on a 2001 LINCOLN NAVIGATOR 4WD. The current value of the collateral is believed to be \$26,200.00.
4. The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so.
5. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".
6. The Contract requires insurance be maintained by buyer to protect Creditor's interest in the collateral. No evidence of insurance has been provided since filing.

Dated: 8-23-04

Chester Marzec

Chester Marzec
Ford Motor Credit Company
National Bankruptcy Svc Center
PO Box 537950
Livonia, MI 48153-7950

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-34728

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Chapter 7 Case

MEMORANDUM OF FACT AND LAW

Ford Motor Credit Company ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in the possession of the Debtor.

The total net balance due on the Contract is \$36,107.75 as of August 12, 2004. On information and belief, the collateral has a current NADA retail value of \$26,200.00. A copy of the NADA page(s) showing the value of the collateral is attached as Exhibit "C".

The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so. Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments. There has been a further material default; Debtor has failed to comply with the Contract provision requiring Debtor to supply Movant with evidence of collateral insurance.

ARGUMENT

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since June 27, 2004.
- Failure to make payments due post petition under the Contract.

- Failure to reaffirm, redeem or surrender the collateral.
- Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrtcy. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$36,107.75. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to 11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: August 23, 2004

STEWART, ZLIMEN & JUNGERS, LTD.
/s/ Linda Jeanne Jungers
Linda Jeanne Jungers, Atty ID #5303X
Attorneys for Movant
430 Oak Grove Street #200
Minneapolis, MN 55403
612-870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-34728

James Arnold Waller and Wendi Christine Waller
Debtor(s)

Chapter 7 Case

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on August 23, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

James Arnold Waller
Rural Rte 1 Box 120
Millville, MN 55957

Wendi Christine Waller
Rural Rte 1 Box 120
Millville, MN 55957

Jeffrey D Bagniefski
9 First St NW
PO Box 6
Rochester, MN 55903

Charles W Ries
Chapter 7 Trustee
PO Box 7
Mankato, MN 56002-0007

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Executed on: August 23, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

04-03466-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-34728

James Arnold Waller and Wendi Christine Waller
Debtor(s)

Chapter 7 Case

ORDER FOR RELIEF FROM THE STAY

Ford Motor Credit Company's Motion for an order granting relief from the stay came before the Court on September 13, 2004 at 10:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Ford Motor Credit Company to repossess and sell the 2001 LINCOLN NAVIGATOR 4WD, VIN 5LMFU28A81LJ03408, in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

United States Bankruptcy Judge